

HOUSE BILL REPORT

SHB 1014

As Amended by the Senate

Title: An act relating to DNA testing.

Brief Description: Revising DNA testing provision.

Sponsors: By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Darneille, O'Brien, Cody, Morrell, Chase and Schual-Berke).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 1/21/05 [DPS].

Floor Activity:

Passed House: 1/26/05, 96-0.

Senate Amended.

Passed Senate: 2/16/05, 47-0.

Brief Summary of Substitute Bill

- Eliminates the dates and deadlines established for convicted persons to request postconviction deoxyribonucleic acid (DNA) testing.
- Requires requests for postconviction DNA testing to be submitted directly to the courts instead of the Office of Public Defense (OPD) and the county prosecutor's office.
- Provides for indigent persons to obtain legal counsel in order to prepare and present a motion for postconviction DNA testing.
- Requires all biological material secured in connection with a criminal case to be preserved for a length of time as defined by the court.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Pearson, Ranking Minority Member; Ahern, Kagi, Kirby and Strow.

Staff: Yvonne Walker (786-7841).

Background:

Postconviction DNA Testing. Through December 31, 2004, a person sentenced to imprisonment for a felony conviction who has been denied DNA testing may request postconviction DNA testing, if the DNA testing was not admitted at his or her trial because:

- The court ruled that DNA testing did not meet acceptable scientific standards; or
- DNA testing technology was not sufficiently developed to test the DNA evidence in the case.

On or after January 1, 2005, a person must raise the DNA issues at trial or on appeal.

A request for postconviction DNA testing must be submitted to the OPD. The OPD then transmits the request to the county prosecutor's office in the county where the conviction was obtained. The prosecutor screens the request and determines whether:

- the evidence still exists; and
- there is a likelihood that the DNA evidence would demonstrate innocence on a more probable than not basis.

The prosecutor must inform both the requestor and the OPD of the decision on testing. If the prosecutor denies the request, the prosecutor must advise the requestor of appeals rights.

Appeals of Prosecutorial Denials. Upon the denial of a request for postconviction DNA testing, the decision may be appealed to the Office of the Attorney General (AG). The request must be granted if the AG's office determines that it is likely that the DNA testing would demonstrate innocence on a more probable than not basis.

DNA Testing. The DNA testing, if ordered, must be conducted by the Washington State Patrol Crime Laboratory.

Biological material secured in connection with a criminal case prior to July 22, 2001, may not be destroyed before January 1, 2005.

Summary of Substitute Bill:

All sunset provisions originally established for convicted persons to request postconviction DNA testing are eliminated.

Under the Act, any person sentenced to imprisonment for a felony conviction may submit a written motion directly to the court of conviction requesting postconviction DNA testing. A copy of the motion must also be submitted to the OPD.

Each motion requesting DNA testing must state the following:

- the court ruled that DNA testing did not meet acceptable scientific standards;
- that the DNA testing technology was not sufficiently developed to test the DNA evidence in the case; or
- the DNA testing currently being requested would be significantly more accurate than prior DNA testing or would provide significant new information.

In addition, the motion must: (1) explain why the DNA evidence is material to the identity of the perpetrator or accomplice involved in the crime or to the sentence enhancement; and (2) comply with all procedural requirements established by court rule.

If the motion submitted to the court meets the appropriate standards and the person sentenced to imprisonment has shown the likelihood that the DNA evidence would demonstrate innocence on a more probable than not basis, the court (instead of the prosecutor) must grant the motion to request DNA testing.

Upon a written request to the court, the court may in its discretion appoint legal counsel to solely prepare and present a motion for postconviction DNA testing for an indigent person serving a term of imprisonment. A motion for appointment of counsel must comply with all procedural requirements established by court rule.

Appeals of Prosecutorial Denials. The appeals process previously handled by the AG is eliminated.

DNA Testing. All DNA testing, if ordered, will continued to be conducted by the Washington State Patrol Crime Laboratory.

The court must adopt rules for the preservation of all biological material and evidence samples in connection with criminal cases.

Upon the motion of defense counsel or at the court's own motion, all biological material or evidence samples that have been secured in connection with a criminal case must be preserved. The court must specify the samples to be maintained and the length of time the samples must be preserved.

EFFECT OF SENATE AMENDMENT(S):

The amendment deletes the provision that stated that the court must adopt rules for the preservation of all DNA materials. However, an amendment was made to require that DNA must be preserved in accordance with any court rules that are adopted.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: This bill contains an emergency clause and takes effect immediately.

Testimony For: This was an agreed upon bill in 2004, but due to lack of time, the Legislature did not get a chance to have it moved and voted off the suspension calendar.

In addition, President Bush has recently signed the Justice for All Act which provides legal protections to ensure that people that have been falsely imprisoned have not been victimized by our judicial system. Some federal funding, totaling \$755 million, may be available through the act to help states clean out the backlog of postconviction DNA testing and evidence. In

order to receive a portion of that initiative funding, state law must conform with federal law. This bill as drafted meets those standards.

The current state statute expired on December 31, 2004 and as a result, the amendment providing an emergency provision to the bill will fix that sunset provision and will allow the bill to go into effect as soon as possible. In addition, the amendment that adds a court rule to the bill is a good provision. It can often get confusing as to what DNA evidence does and does not have to be preserved.

DNA testing has been a remarkable tool for overturning wrongful convictions across the United States. To date there have been at least 154 people that have had their cases overturned due to postconviction DNA testing. One particular example in Washington was a Clark County case where a person was convicted for child rape, but after eight years the DNA evidence found the person innocent.

DNA testing helps to ensure that justice is administered correctly for those few people that have been convicted of crimes that they did not commit.

Testimony Against: None.

Persons Testifying: (In support) Representative Darneille, sponsor; Joanne Moore and Mary Jane Ferguson, Washington State Office of Public Defense; Dan Satterberg, Washington Association of Prosecuting Attorneys and King County Prosecuting Attorneys Office; Jacqueline McMurtie, Assistant Professor, Innocence Project Northwest, Washington Association of Criminal Defense Lawyers, and Washington Defenders Association; and Barry Logan, Director of Forensic Lab, Washington State Patrol.

(Comments only) Michael Fuller, Association Against Homelessness in America.

(In support with amendments) Debbie Wilke, Washington Association of County Officials.

Persons Signed In To Testify But Not Testifying: None.